LIBRARY
SUPREME COURT, U. S.

No. 72-1231

FILED
APR 20 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1231

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Respondent, in its Brief in Opposition, raises an issue not presented in our petition, *i.e.*, whether the Board's Regional Director failed fully to investigate objections to the election when, upon receipt of an employee's letter alleging improper union conduct during the election, he neither notified the Company or the Union of such letter, nor advised the employee that he could appear at the hearing on the Company's objections (Br. in Opp. 1-2). Respondent thus seeks to sustain the judgment of the court below on a ground rejected by that court; although the court denied enforcement of the Board's order on the ground that the Union's promise to waive initiation fees unduly interfered with employee free choice, the court rejected the contention

based on the employee letter (Pet. App. 15-16). We agree with the court of appeals that this contention affords no valid basis for denying enforcement of the Board's order. The relevant facts on this issue are as follows:

On October 15, 1970, 23 days after the election, employee Reibling wrote a letter to the Regional Director objecting to the election on the ground that the Union had engaged in certain conduct which had had a coercive impact upon the election. On October 21, the Regional Director advised Reibling that, since he was not a party to the proceeding, he had no standing to file objections, and that, in any event, his objections were untimely since they were filed more than 5 working days after the election.[1] The Director added that at least part of the allegedly coercive conduct did not appear to justify setting aside the election, that timely objections had been filed by one of the parties and were scheduled for hearing on October 28, and that, although these objections did not specifically

---

[1] Section 102.69(a) of the Board's Rules and Regulations (29 C.F.R. 102.69(a)) provides that "any party" may file objections to an election. As the Board interprets this provision, individuals who do not claim to represent employees for the purpose of collective bargaining are neither considered a party to, nor ordinarily permitted to intervene in, a representation proceeding. *Association of Motion Picture Producers, Inc.*, 88 NLRB 521, n. 6; *Shoreline Enterprises of America*, 114 NLRB 716, 717, n. 1.

Moreover, Section 102.69(a) requires that, absent unusual circumstances, election objections must be filed within 5 days after the tally of ballots has been furnished. *Eklund Bros. Transport, Inc.*, 136 NLRB 471, n. 1. See *Van Tran Electric Corporation* v. *National Labor Relations Board*, 449 F. 2d 774 (C.A. 6). The tally of ballots was furnished to the parties on September 22, 1970 (Pet. App. 23).

encompass the complaints raised in Reibling's letter, some of Reibling's complaints might be brought out at the hearing (Br. in Opp. 11b-12b).

On April 7, 1971, after the Union had been certified as the bargaining representative of the Company's employees, the Company petitioned the Board to set aside the certification on the ground that it had just learned that, prior to the date of the hearing on its objections, certain employees, including Reibling, had notified the Regional Director that they wished to object to the election, but that the Director had discouraged them and had failed to inform the parties of the employees' protest or to call the employees as witnesses. In support of its petition, the Company merely attached the Director's response to Reibling's letter (A. 15-19). The Board denied the petition (A. 20-21).

In view of the fact that Reibling was not a party to the proceeding, that his objections were not timely filed, and that they appeared to be extraneous to the objections filed by the Company, the Regional Director acted reasonably in declining to notify the Company or the Union of Reibling's letter or to call him to testify at the hearing on the Company's objections. Moreover, since the Company's subsequent petition to revoke the certification was not accompanied by a specific showing respecting the nature of the conduct protested by Reibling or the other employees and the likelihood that it affected employee free choice in the election, the Board was warranted in summarily denying the petition. See *National Labor Relations Board* v. *Tennessee Packers, Inc.*, 379 F 2d 172, 178 (C.A. 6), certiorari denied, 389 U.S. 958. There was thus no abuse of the broad discretion which Congress has conferred upon the

Board to establish "the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees" and to insure that "employees' votes may be recorded accurately, efficiently and speedily." *National Labor Relations Board* v. *A. J. Tower Co.*, 329 U.S. 324, 330-331.[2]

For the foregoing reasons and for the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

APRIL 1973.

---

[2] The cases relied on by respondent (Br. in Opp. 7) are factually distinguishable. In *National Labor Relations Board* v. *Brown Lumber Co.*, 336 F. 2d 641 (C.A. 6), the court held that the Regional Director improperly failed to investigate the company's election objections even though it had not served the union with a copy of the objections as required by Section 102.69(a) of the Board's rules; the court found that the union had not been prejudiced since it knew of the company's oral protest at the time of the election. That *Brown Lumber* is to be confined to its special facts is confirmed by the Sixth Circuit's subsequent decision in *Van Tran Electric Corp.* v. *National Labor Relations Board*, 449 F. 2d 774, sustaining the Board's refusal to consider objections made 56 days late allegedly due to an error by the employer's counsel. In *National Labor Relations Board* v. *Mrs. Weaver's Salads*, 439 F. 2d 1116 (C.A. 6), the election objections had been timely filed, but they were overruled because the company had failed to provide supporting evidence within 10 days; the court found that, in the circumstances presented, it was unreasonable not to give the company a 5-day extension of time.